JW Properties Sdn Bhd & Anor v Pentadbir Tanah Kuala Selangor & Anor

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO BA-21NCVC-57–10 OF 2019
ALICE LOKE J
30 AUGUST 2023

Land Law — Acquisition of land — Compensation — Plaintiffs alleged land administrator's actions culminated in award of compensation being made in their favour — Whether land administrator made award of compensation — Land Acquisition Act 1960 s 14

The second defendant ie the State Government of Selangor ('State Government') invited the first plaintiff ie JW Properties Sdn Bhd ('JW Properties') to participate in a prawn farming project ('the project') on lands ('the lands') in Selangor. At the material time, the lands belonged to Perbadanan Kemajuan Pertanian Selangor ('PKPS'). PKPS entered into a joint venture agreement ('JVA') with JW Properties to execute the project. Pursuant to the JVA, PKPS was to bear 30% of the costs for carrying out the project which included the costs of filing up the swamps and developing the swamps into an operational prawn farm. However, the project costs were borne solely by the plaintiffs. They expended their own monies to fill up the swamps. In return, PKPS and Evergrowth Aquaculture Sdn Bhd entered into a lease agreement for a lease of 50 years to enable the plaintiffs to recover the costs incurred and to make a profit from operating the prawn cultivation farms. The lease agreement provided for PKPS to apply for consent for the lease from the State Authority, which would then facilitate the registration of the lease. Unfortunately, the State Authority rejected the application for consent to lease. To compound matters, the lands were acquired. Pursuant to the provisions of the Land Acquisition Act 1960 ('the LAA'), the land administrator ('LA') held an enquiry to determine compensation in respect of the acquisition. At the enquiry, compensation was claimed by both PKPS and the plaintiffs. The LA delivered its decision and awarded PKPS compensation as the registered owner of the lands, but no award was made for the plaintiffs. Dissatisfied, the plaintiffs filed their objections which were referred to the High Court. The High Court ordered that the LA's award be maintained. The plaintiffs appealed to the Court of Appeal. In allowing the appeal and setting aside the decision of the High Court, the Court of Appeal made an order that the matter be remitted to the LA to determine compensation. The plaintiffs decided to pursue their claim with the LA. The LA then invited the plaintiffs to what was termed as 'ulangan siasatan' on a number of occasions. Subsequently, the LA issued a letter to the Director of the State Economic Planning Unit ('the EPU letter')

A and together with the attachment to the EPU letter ('the disputed award') was copied to the plaintiffs. Subsequent to the EPU letter, the LA issued a letter to the plaintiffs requesting them to furnish its audited reports in order to process the payment for compensation. The plaintiffs responded to register their objection at the request and to complain about the delay in making payment B for the award. However, the LA informed the plaintiffs that no award of compensation for the amount of RM56,992,100.30 had been made. Dissatisfied, they issued a notice of demand for payment of RM56,992,100.30. The plaintiffs contended that the LA, by the disputed award, had made a final award of compensation under the provisions of the C LAA. The issue for determination was whether the LA had made an award of compensation for RM56,992,100.30 vide the disputed award.

Held, dismissing the claim:

D (1) The plaintiffs' contention that an award under s 14 of the LAA had been made was wholly misconceived. The only award envisaged under s 14 of the LAA was the award made following the procedures laid down in LAA, namely ss 10 and 12 of the LAA. The disputed award was made in an 'ulangan siasatan' which was not the procedure laid down in the law. In E the circumstances, the disputed award could not be said to be an award made pursuant to s 14 of the LAA. In addition, an award made under s 14(1) of the LAA must be followed with a service of a notice in Form H which was not done. In any event, the provisions of the LAA did not provide for a LA to conduct an 'ulangan siasatan'. It would be giving a very strained interpretation to the provisions of the LAA for an award F under s 14(1) of the LAA to cater for the disputed award made in an 'ulangan siasatan'. Further, the EPU letter was merely copied to the plaintiffs. Its attachment, in the form of the disputed award, could not be construed as an award within the meaning of s 14 of the LAA. In the circumstances, the main relief sought for could not be granted (see G paras 48, 51–52, 56, 59–60 & 62).

(2) In view of the decision on the main relief, the question of late payment charges and the issue of damages did not arise (see paras 64–65).

H **[Bahasa Malaysia summary**

Defendan kedua iaitu Kerajaan Negeri Selangor ('Kerajaan Negeri') mempelawa plaintif pertama iaitu JW Properties Sdn Bhd ('JW Properties') untuk menyertai projek ternakan udang ('projek') di atas tanah ('tanah') di Selangor. Pada masa material, tanah adalah kepunyaan Perbadanan Kemajuan I Pertanian Selangor ('PKPS'). PKPS memeterai perjanjian usaha sama ('PUS') dengan JW Properties untuk melaksanakan projek tersebut. Menurut PUS, PKPS akan menanggung 30% daripada kos untuk melaksanakan projek itu termasuk kos menutup paya dan membangunkan paya menjadi ladang udang yang beroperasi. Walau bagaimanapun, kos projek ditanggung sepenuhnya

oleh plaintif. Mereka membelanjakan wang mereka sendiri untuk menutup paya. Sebagai balasan, PKPS dan Evergrowth Aquaculture Sdn Bhd memeterai perjanjian pajakan selama 50 tahun bagi membolehkan plaintif mendapatkan semula kos yang ditanggung dan mengaut keuntungan daripada mengendalikan ladang ternakan udang. Perjanjian pajakan memperuntukkan PKPS untuk memohon persetujuan pajakan daripada Pihak Berkuasa Negeri, yang kemudiannya akan memudahkan pendaftaran pajakan. Malangnya, Pihak Berkuasa Negeri menolak permohonan kebenaran pajakan. Tambahan lagi, tanah telah diambil. Menurut peruntukan Akta Pengambilan Tanah 1960 ('APT'), pentadbir tanah ('PT') mengadakan siasatan untuk menentukan pampasan berkenaan dengan pengambilan itu. Pada siasatan itu, pampasan telah dituntut oleh PKPS dan plaintif. PT menyampaikan keputusannya dan menganugerahkan pampasan kepada PKPS sebagai pemilik berdaftar tanah, tetapi tiada award dibuat untuk plaintif. Tidak berpuas hati, plaintif memfailkan bantahan mereka yang dirujuk ke Mahkamah Tinggi. Mahkamah Tinggi memerintahkan supaya award PT dikekalkan. Plaintif merayu kepada Mahkamah Rayuan. Dalam membenarkan rayuan dan mengetepikan keputusan Mahkamah Tinggi, Mahkamah Rayuan membuat perintah supaya perkara itu dikembalikan kepada PT untuk menentukan pampasan. Plaintif memutuskan untuk meneruskan tuntutan mereka dengan PT. PT kemudian menjemput plaintif kepada apa yang diistilahkan sebagai 'ulangan siasatan' pada beberapa kejadian. Selepas itu, PT mengeluarkan surat kepada Pengarah Unit Perancang Ekonomi Negeri ('surat EPU') dan bersama-sama lampiran surat EPU ('award yang dipertikaikan') telah diberi salinan kepada plaintif. Selepas surat EPU itu, PT mengeluarkan surat kepada plaintif meminta mereka memberikan laporan terauditnya untuk memproses pembayaran pampasan. Plaintif membalas untuk mendaftarkan bantahan mereka atas permintaan itu dan mengadu tentang kelewatan dalam membuat pembayaran untuk award tersebut. Walau bagaimanapun, PT memaklumkan plaintif bahawa tiada award pampasan bagi jumlah RM56,992,100.30 telah dibuat. Tidak berpuas hati, mereka mengeluarkan notis tuntutan bayaran RM56,992,100.30. Plaintif berhujah bahawa PT, melalui award yang dipertikaikan, telah membuat award akhir pampasan di bawah peruntukan APT. Isu untuk penentuan adalah sama ada PT telah membuat award pampasan sebanyak RM56,992,100.30 melalui award yang dipertikaikan.

Diputuskan, menolak tuntutan:

(1) Pendapat plaintif bahawa award di bawah s 14 APT telah dibuat adalah salah sangka sepenuhnya. Satu-satunya award yang dinyatakan di bawah s 14 LAA APT adalah award yang dibuat mengikut prosedur yang ditetapkan dalam APT, iaitu ss 10 dan 12 APT. Award yang dipertikaikan itu dibuat dalam 'ulangan siasatan' yang bukan prosedur yang ditetapkan dalam undang-undang. Dalam keadaan tersebut, award yang dipertikaikan tidak boleh dikatakan sebagai award yang dibuat menurut

s 14 APT. Di samping itu, award yang dibuat di bawah s 14(1) APT mesti diikuti dengan penyampaian notis dalam Borang H yang tidak dilakukan. Walau apa pun, peruntukan APT tidak memperuntukkan PT untuk menjalankan 'ulangan siasatan'. Ia akan memberi tafsiran yang mengubah kepada peruntukan APT untuk award di bawah s 14(1) APT untuk memenuhi award yang dipertikaikan yang dibuat dalam 'ulangan siasatan'. Selanjutnya, surat EPU hanya diberi salinan kepada plaintif. Lampirannya, dalam bentuk award yang dipertikaikan, tidak boleh ditafsirkan sebagai award dalam pengertian s 14 APT. Dalam keadaan tersebut, relif utama yang dipohon tidak dapat diberikan (lihat perenggan 48, 51–52, 56, 59–60 & 62).

(2) Dengan keputusan mengenai relif utama, persoalan caj pembayaran lewat dan isu ganti rugi tidak timbul (lihat perenggan 64–65).]

Cases referred to

AJS v JMH and another appeal [2022] 1 MLJ 778, FC (refd)

Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 4 MLJ 721, FC (refd)

Legislation referred to

Government Proceedings Act 1956

Land Acquisition Act 1960 ss 10, 12, 14, 14(1) 16, 32, Forms G, H, N

Jason Lai (Munhoe & Mar) for the plaintiffs.

Khairul Nizam bin Abu Bakar (with Etty Eliany Tesno and Muhammad Shah Faris) (Selangor State Legal Advisor's Office) for the defendants.

Alice Loke J:

INTRODUCTION

[1] The plaintiffs' claim has its origins in the enquiry held by the land administrator in land acquisition proceedings. The plaintiffs did not receive any award of compensation for their claim. Aggrieved at the decision, they filed land reference proceedings in the Shah Alam High Court.

[2] The High Court upheld the land administrator's decision not to make an award of compensation.

[3] The plaintiffs pursued their claim by appealing to the Court of Appeal. The Court of Appeal allowed the appeal. In allowing the appeal, a specific order was issued for the land administrator to determine compensation.

[4] Subsequent thereto, the land administrator took steps to seemingly comply with the order of the Court of Appeal, by engaging the plaintiffs in a series of meetings and correspondence. The plaintiffs now allege that the land administrator's actions had culminated in an award of compensation of RM56,992,100.30 being made in their favour, which the defendants are legally obliged to pay. The instant suit filed is to compel payment of the award.

THE SALIENT FACTS

[5] The background facts which led to the filing of the plaintiffs' claim, are in the narration of events in the statement of claim. They are as follows.

[6] On or about the year 2002, the second defendant, the State Government of Selangor ('state government') invited the first plaintiff ('JW Properties') to participate in a prawn farming project in Selangor ('the project') on lands identified as HSD 13555PT 4172, HSD 13556 PT 4173 and HSD 13557 PT 4174 ('the lands'). At the material time, the lands on which the project was earmarked to be carried out belonged to Perbadanan Kemajuan Pertanian Selangor ('PKPS'), the state government's agricultural arm. To give effect to the intention of the parties, on 8 November 2002, PKPS entered into a joint venture agreement ('JVA') with JW Properties to execute the project.

[7] As the lands were originally swamps in the coastal area of Selat Melaka, the land had to be first rehabilitated into proper lands to support the infrastructure required for prawn cultivation farms. Pursuant to the JVA, PKPS was to bear 30% of the costs for carrying out the project which included the costs of filling up the swamps and developing the swamps into an operational prawn farm.

[8] However, as events turned out, the project costs were borne solely by the plaintiffs. They expended their own monies to fill up the swamps. In return, PKPS and Evergrow entered into a lease agreement for a lease of 50 years to enable the plaintiffs to recover the costs incurred and to make a profit from operating the prawn cultivation farms. The lease agreement dated 18 December 2007 provided for PKPS to apply for consent for the lease from the state authority, which will then facilitate the registration of the lease.

[9] Unfortunately, in 2009, the state authority rejected the application for consent to lease. To compound matters, the lands were acquired vide Gazette Notification 2169 dated 25 June 2009 for the purpose of *Pemuliharaan Bakau di Mukim Api-Api Daerah Kuala Selangor*.

[10] Pursuant to the provisions of the Land Acquisition Act 1960 ('the LAA'), the land administrator held an enquiry to determine compensation in

respect of the acquisition. At the enquiry, compensation was claimed by both PKPS and the plaintiffs.

[11] On 15 September 2009, the land administrator delivered its decision on compensation. PKPS was awarded compensation as the registered owner of the lands, but no award was made for the plaintiffs.

[12] Dissatisfied with award, the plaintiffs filed their objections in Form N. Their objections were referred to the Shah Alam High Court. As JW Properties and Evergrow filed separate objections, involving three pieces of land, it resulted in six land reference proceedings filed in court.

[13] On 19 September 2013, the High Court ordered that the land administrator's award be maintained. The effect of the decision was that no compensation was to be awarded to the plaintiffs.

[14] The plaintiffs appealed to the Court of Appeal. On 10 December 2014, the plaintiffs' appeal was allowed. In addition, the Court of Appeal made several orders, one of which was to assume significance as it resulted in the filing of the present suit. In allowing the appeal and setting aside the decision of High Court, the Court of Appeal also made an additional order that the matter be remitted to the land administrator to determine compensation.

[15] Two years hence and pursuant to the order of the Court of Appeal, the plaintiffs decided to pursue their claim with the land administrator. Vide letter dated 11 July 2016, their solicitors wrote to demand that the land administrator conduct an enquiry to determine the amount of compensation. The letter further stated that in the light of the decision of the Court of Appeal, the plaintiffs' entitlement to compensation was no longer in issue. What remained to be decided was merely the quantum payable.

[16] The land administrator responded to invite the plaintiffs to attend what was termed as 'ulangan siasatan', on 6 September 2016. The plaintiffs attended the said 'ulangan siasatan'. Subsequent thereto, the plaintiffs were asked to furnish proof of the expenses incurred as a result of the acquisition. They did so in January 2017.

[17] By a letter dated 16 February 2017, the plaintiffs were again requested by the land administrator to present themselves at the office of the land administrator on 28 February 2017. The purpose of the attendance was captured in the heading of the letter which was titled, *Ulangan siasatan Perbicaraan Menurut Perintah Mahkamah Bagi Menentukan Jumlah Pampasan Yang Kena Dibayar kepada JW Properties Sdn Bhd dan Evergrowth Acquaculture Sdn Bhd.*

[18] A few months later, the plaintiffs were again informed to be present at another 'ulangan siasatan' on 5 October 2017. Again, as in the previous occasions, the plaintiffs attended.

[19] On 10 October 2017, the land administrator issued a letter to the Director of the State Economic Planning Unit ('EPU letter'). As the contents of the letter is significant, particularly to the plaintiffs, it is reproduced below:

PTKS 7/3/2009 Jld 3(25)

10 Oktober 2017

Pengarah

Seksyen Agihan Dan Pembangunan

Unit Perancang Ekonomi Negeri

Pejabat Setiausaha Kerajaan Negeri Selangor

Tingkat 13, Bangunan S.S.A.A.S

40000 Shah Alam

(u.p.: *Pn. Siti Hajar bt Mohd Kasim*)

Tuan,

Penentuan Award Pampasan Menurut Perintah-Perintah Mahkamah Yang Kena Dibayar kepada JW Properties Sdn Bhd ('JW Properties') dan Evergrowth Aquaculture Sdn Bhd ('Evergrowth Aquaculture') Pengambilan bagi Hakmilik:

1. HSD 13555 PT 4172, Mukim Api-Api
2. HSD 13556 PT 4173. Mukim Api-Api
3. HSD 13557 PT 4174, Mukim Api-Api

Pengambilan Balik Tanah Bagi Tujuan Pemuliharaan Tanaman Bakau Mukim Api-Api Daerah Kuala Selangor

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Dengan hormatnya merujuk kepada perkara di atas.

2. Untuk makluman tuan, Bersama-sama ini dikemukakan award pampasan bertulis bagi JW Properties Sdn Bhd dan Evergrowth Aquaculture Sdn Bhd. Bayaran pampasan tersebut boleh dibayar kepada Evergrowth Aquaculture Sdn Bhd, kepada akaun Malayan Banking Berhad, Cawangan Kuala Selangor no. akaun 512138001279. Bersama-sama ini juga disertakan sesalinan surat daripada syarikat JW Properties Sdn Bhd untuk makluman dan tindakan pihak tuan selanjutnya.

3. Kerjasama dan perhatian pihak tuan dalam perkara ini amatlah dihargai dan diucapkan ribuan terima kasih.

Sekian.

'MEMBANGUN BANGSA MEMAKMUR NEGERI'

'BERKHIDMAT UNTUK NEGARA'

Saya yang menurut perintah,

t.t
(HAZANA @ HARTINI BINTI HISAMUDDIN)
b.p Pentadbir Tanah
Kuala Selangor.

s.k.:

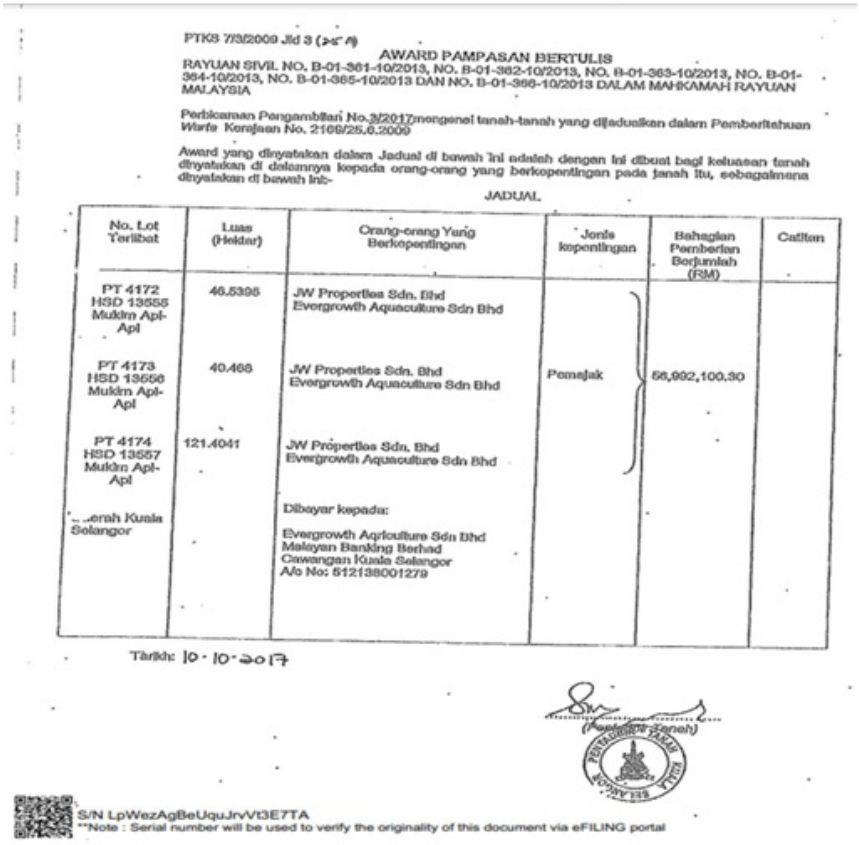
1. Pegawai Kewangan Negeri
Perbendaharaan Negeri Selangor
Tingkat 2, 8-12, Bangunan Sultan Salahuddin Abdul Aziz Shah

2. Pegawai Undang-Undang Negeri Selangor
Kamar Penasihat Undang-Undang
Negeri Selangor Darul Ehsan
Tingkat 4, Podium Utara
Bangunan Sultan Salahuddin Abdul Aziz Shah
40512 SHAH ALAM

3. JW Properties Sdn Bhd
84-A, First Floor, Jalan Burhanuddin Helmi
Taman Tun Dr. Ismail
60000 KUALA LUMPUR

4. Evergrowth Aquaculture Sdn Bhd
84-A, First Floor, Jalan Burhanuddin Helmi
Taman Tun Dr. Ismail
60000 KUALA LUMPUR

[20] The attachment to the EPU letter ('disputed award') is reproduced below:



PTKS 7/3/2009 Jld 3 (24" A)

AWARD PAMPASAN BERTULIS

RAYUAN SIVIL NO. B-01-361-10/2013, NO. B-01-362-10/2013, NO. B-01-363-10/2013, NO. B-01-364-10/2013, NO. B-01-365-10/2013 DAN NO. B-01-366-10/2013 DALAM MAHKAMAH RAYUAN MALAYSIA

Perbicaraan Pengambilan No.3/2017mengenai tanah-tanah yang dijadualkan dalam Pemberitahuan Warta Kerajaan No. 2169/25.6.2009

Award yang dinyatakan dalam Jadual di bawah ini adalah dengan ini dibuat bagi keluasan tanah dinyatakan di dalamnya kepada orang-orang yang berkepentingan pada tanah itu, sebagaimana dinyatakan di bawah ini:-

JADUAL

No. Lot Terlibat	Luas (Hektar)	Orang-orang Yang Berkepentingan	Jenis kepentingan	Bahagian Pemberian Berjumlah (RM)	Catitan
PT 4172 HSD 13555 Mukim Api-Api	46.5395	JW Properties Sdn. Bhd Evergrowth Aquaculture Sdn Bhd	Pemajak	56,902,100.30	
PT 4173 HSD 13556 Mukim Api-Api	40.466	JW Properties Sdn. Bhd Evergrowth Aquaculture Sdn Bhd			
PT 4174 HSD 13557 Mukim Api-Api	121.4041	JW Properties Sdn. Bhd Evergrowth Aquaculture Sdn Bhd			
...erah Kuala Selangor		Dibayar kepada: Evergrowth Agriculture Sdn Bhd Malayan Banking Berhad Cawangan Kuala Selangor A/c No: 512138001279			

Tarikh: 10-10-2017

(Pentadbir Tanah)

PENTADBIR TANAH KUALA SELANGOR

S/N LpWezAgBeUquJrvVt3E7TA

**Note : Serial number will be used to verify the originality of this document via eFILING portal

[21] The EPU letter was copied to the plaintiffs. This letter, particularly the disputed award, is the very basis upon which the plaintiffs' case now rests. The plaintiffs contend that the land administrator, by the disputed award, had made a final award of compensation under the provisions of the Land Acquisition Act 1960.

[22] Subsequent to the EPU letter, the land administrator issued a letter dated 16 July 2018 to the plaintiffs requesting them to furnish its audited reports in order to process the payment for compensation. The plaintiffs responded to register their objection at the request and to complain about the delay in making payment for the award issued on 10 October 2017.

[23] On 3 September 2018, the land administrator appeared to take an about-turn when he informed both plaintiffs that that no award of compensation for the amount of RM56,992,100.30 had been made. The reason proffered, evident from the letter, was 'Ini kerana Borang G and Borang H belum dikeluarkan oleh pentadbir tanah kepada anak guam tuan kerana siasatan pengambilan tanah belum selesai sehingga semakan semula terhadap salinan resit-resit yang dikemukakan dikendalikan dan jumlah award pampasan dimuktamadkan dengan pengeluaran Borang G dan Borang H oleh pentadbir tanah'. The plaintiffs were again reminded to furnish the requisite documents to substantiate their claim for compensation.

[24] The plaintiffs objected to the stand taken by the land administrator to dispute that no award had been made. Dissatisfied, they instructed their solicitors to issue a notice of demand for payment of RM56,992,100.30. It is against this backdrop that the plaintiffs have filed the instant suit.

THE CLAIM OF THE PLAINTIFFS

[25] The plaintiffs contend that the land administrator had completed the enquiry when it prepared the disputed award dated 10 October 2017. The EPU letter by the land administrator requesting the state economic planning unit to make payment of RM56,992,100.30 to the plaintiffs, further confirmed that an award had been made.

[26] In view of these actions taken, the land administrator is now estopped from denying that the 'ulangan siasatan' has concluded and that an award of compensation had in fact been made. Its refusal to make payment amounts to a breach of statutory duty on the part of the land administrator, for which the state government is vicariously liable under the provisions of the Government Proceedings Act 1956.

[27] Apart from the principal contention that an award had been made by the land administrator, the plaintiffs' statement of claim also contains numerous allegations against the state government. It was alleged that the state government had failed to uphold its end of the bargain when it invited JW Properties to participate in the project. It also agreed that JW Properties was to bear only 70% of the costs of the project. It failed to ensure that PKPS was to bear the remaining 30%. In addition, contrary to the representation made to the plaintiffs by the state government that Evergrow would be given a 99 year lease to recover the costs expended, the latter was granted only a 50 year lease.

[28] The plaintiffs also alleged that the stated purpose of the compulsory acquisition was mala fides and unreasonable as the plaintiffs had already filled up the swamp lands to developed lands. In view of this, the acquisition to carry

out rehabilitation of the swamp lands was suspect. Added to that, the state government had profited at the expense of the plaintiffs as the latter had solely borne and paid for the costs to improve the said lands. The state government had therefore acted in bad faith and an oppressive manner.

[29] At the trial, these allegations were not strenuously pursued. The plaintiffs' claim was principally premised on the fact that the land administrator had clearly made an award of compensation on 10 October 2017 for the sum of RM56,992,100.30. The defendants are now not entitled to withhold payment.

[30] By failing to pay the plaintiffs, the defendants had breached their statutory duties under the Land Acquisition Act 1960. The plaintiffs thereupon seek an order that the defendants pay the award of compensation of RM 56,992,100.30 to the plaintiffs. The payment of such award is to carry late payment charges under s 32.

[31] The plaintiffs also seek to be awarded aggravated and exemplary damages against the defendants for having acted in contumelious disregard for the plaintiffs' rights to the compensation monies, which the plaintiffs regard as oppressive and mala fides.

THE DEFENCE OF THE DEFENDANTS

[32] The defendants' position is that the land administrator had complied with the Court of Appeal's order of 10 December 2014 by conducting the 'ulangan siasatan'. However, it did not conclude with the issuance of an award. They contend that no award had been made by the land administrator. The disputed award in the document dated 10 October 2017 and relied on by the plaintiffs, is not a statutory award in Form G under the Land Acquisition Act 1960. Further, it was not followed with a notification in Form H to the plaintiffs.

[33] The plaintiffs' claim that an award had been made is not borne out by the oral and documentary evidence before this court. In short, the entire claim of the plaintiffs is without merit and not proven.

ISSUES FOR DETERMINATION

[34] Arising from the respective positions taken, the central issue for determination is whether the land administrator had made an award of compensation for RM56,992,100.30 vide the disputed award dated 10 October 2017. The other reliefs sought by the plaintiffs rests upon a determination of this principal issue.

ANALYSIS AND DECISION OF THIS COURT

[35] The plaintiffs and the defendants relied on both documentary and oral evidence to prove their case. The plaintiffs called one of their directors to testify on their behalf. He adduced evidence on the historical background to the dispute as well as the basis of the plaintiffs' claim.

[36] As for the defendants, the land administrator who issued the disputed award testified. Her evidence was to explain in particular, the import of the EPU letter and the disputed award.

[37] Having considered the evidence adduced by the parties, I am of the view that the determination of this case turns mainly on the documents before this court.

THE ORDER OF THE COURT OF APPEAL

[38] I shall revert again to the order which led to the instant dispute. The order of the Court of Appeal in respect of the six appeals reads:

(a) Rayuan dibenarkan;

(b) Perintah Mahkamah Tinggi bertarikh 19 September 2013 diketepikan;

(c) Perkara ini diremitkan kepada Pentadbir Tanah Kuala Selangor untuk taksiran jumlah pampasan kepada Perayu;

(d) Kos sebanyak RM3,000.00 dibayar kepada Perayu;

(e) Deposit dikembalikan kepada Perayu.

[39] With respect, I find the order in para (c) puzzling for the following reasons.

[40] Firstly, the matter before the Court of Appeal emanated from the decision of the High Court in land reference proceedings. Under the Land Acquisition Act 1960 ('the LAA'), land reference proceedings are filed in the High Court where there is an objection filed in Form N against the award of the land administrator. The High Court then hears the land reference assisted by two assessors appointed pursuant to provisions in the Land Acquisition Act 1960. In this case, the High Court made a decision on 19 September 2013 to disallow the objection of the plaintiffs. An appeal was then brought to the Court of Appeal in respect of his decision.

[41] Therefore, when the appeal was allowed, the High Court's decision was ordered to be set aside. This would be followed with an order for the matter to

be remitted to the High Court to be re-heard. Instead, an order for the matter to be remitted to the land administrator to determine compensation, was made.

[42] Secondly, I am doubtful if the land administrator could re-hear the claim for compensation. The law makes no provision for him to re-hear the plaintiffs' claim in respect of the same acquisition.

[43] The order to remit the matter to the land administrator, was therefore, surprising. Unfortunately, I do not have the benefit of knowing if parties made any attempt to seek clarification on the order of the Court of Appeal, which may well have thrown some light on the matter.

[44] In any event, as matters stand, the land administrator made attempts to comply with the order of the Court of Appeal by conducting an 'ulangan siasatan'.

Whether the land administrator had made an award of compensation

[45] The plaintiffs' contend that the 'ulangan siasatan' concluded with a final award on 10 October 2017, evidenced by the disputed award.

[46] The plaintiffs contend that the document was, for all intents and purposes, a written award in Form G pursuant to s 14(1) of the Land Acquisition Act 1960. Their reasons for so saying are as follows:

(a) the format and content of the disputed award complies with the provisions of the Land Acquisition Act 1960. In this regard, the court must have regard to substance over form;

(b) a purposive approach is to be adopted to conclude that the act of the land administrator in conducting the 'ulangan siasatan' was in due compliance with the provisions of ss 12, 14 and 16 which resulted in an award of compensation; and

(c) EPU's letter of 10 October 2017 which was signed by the land administrator and copied to the plaintiffs, is proof of an award having been made.

[47] The defendants contend otherwise as the disputed award does not comply with Form G of the Land Acquisition Act 1960. As far the land administrator is concerned, no award had been made as the process of making an award had not been completed.

[48] Upon considering the documentary evidence referred to, I find the

plaintiffs' contention that an award under s 14 of the Land Acquisition Act 1960 had been made, to be wholly misconceived.

[49] The process by which an award in s 14 is arrived at begins with the land administrator exercising his functions in accordance with the provisions of s 10 by giving public notice in Form E and fixing the date of an inquiry for the hearing of claims to compensation in respect of all interests in such land.

[50] He then proceeds to hold an enquiry in s 12 to assess the amount of compensation which will conclude with a written award in Form G pursuant to s 14. For ease of reference, I have set out the relevant portions of both provisions below:

> 12 Enquiry by the Land Administrator
>
> (1) On the date appointed under of subsection 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule: Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under s 14.
>
> (2) The Land Administrator shall also enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the scheduled land, and into the objections, if any, made by any interested person to the area of any scheduled land.
>
> (3) The Land Administrator may for a sufficient cause to be recorded by him in writing postpone any enquiry or adjourn any hearing of an enquiry from time to time.
>
> 14 Award of the Land Administrator
>
> (1) Upon the conclusion of the enquiry under s 12 relating to any scheduled land the Land Administrator shall prepare a written award under his hand in Form G, in which he shall, in respect of each separate area of scheduled land, make a separate award in respect of each person whose interest in the land has been established in such enquiry.
>
> (2) Every award prepared under subsection (1) shall be filed in the office of the Land Administrator and shall be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the Land Administrator, and of the apportionment of the compensation awarded by the Land Administrator, whether the persons interested therein have or have not appeared at the enquiry.
>
> ...

[51] Reading all these provisions together, I am of the view that the only award envisaged under s 14 is the award made following the procedures laid

down in the Land Acquisition Act 1960, namely ss 10 and 12. This is the process by which an award for compensation is made by the land administrator in land acquisition proceedings. The disputed award was made in an 'ulangan siasatan' which was not the procedure laid down in the law. In the circumstances, the disputed award cannot be said to be an award made pursuant to s 14.

[52] In addition, an award made under s 14(1) must be followed with a service of a notice in Form H (see: s 16 of the Land Acquisition Act 1960). This was not done.

[53] DW1 in her testimony explained the issuance of the EPU letter, attaching the disputed award. She was the land administrator at the material time. She explained that the EPU letter was issued on the instructions of EPU. Her evidence was as follows;

> Dokumen ini dikeluarkan berdasarkan perbincangan bersama wakil UPEN. Surat ini dihantar kepada UPEN bagi tindakan seterusnya kerana wakil UPEN memaklumkan perlu mengemukakan kepada Pejabat Kewangan Negeri Selangor.
>
> Berdasarkan ulangsiasatan kedua, jumlah tuntutan berdasarkan resit yang dikemukakan berjumlah RM56,992,100.30 dan Pentadbir Tanah akan mendapatkan maklumbalas daripada UPEN dan PWN sebelum award pampasan dimuktamadkan. Sehubungan itu, dokumen MS 190–193 dikeluarkan.
>
> Berikutan resit yang dikemukakan sepanjang ulangsiasatan iaitu resit yang difotokopi, Pentadbir Tanah telah dinasihatkan agar meminta syarikat mengemukakan Penyata Kewangan Beraudit (MS 194).
>
> Berdasarkan dokumen MS 198, tiada award pampasan berjumlah RM56,992,100.30 telah diputuskan oleh Pentadbir Tanah Kuala Selangor.
>
> Borang G dan H belum dikeluarkan kepada syarikat sehingga semakan semula terhadap salinan resit-resit selesai dimuktamadkan.
>
> Berdasarkan dokumen MS 198, jumlah RM56,992,100.30 yang dikatakan adalah award pampasan tersebut adalah tidak dimuktamadkan berikutan plaintif gagal mengemukakan dokumen Penyata Kewangan Beraudit.

[54] She categorically denied that she had made a final award. Notwithstanding rigorous cross examination by the plaintiffs' counsel, she insisted that an award had yet to be made.

[55] Counsel for the plaintiffs submitted that her evidence is entirely irrelevant and inconsequential as it is for the court to construe whether the disputed award is a written award under s 14(1) of the Land Acquisition Act 1960. To that extent, I agree with the submission of the plaintiffs' counsel. Her evidence however, offers some explanation on the position taken by the

defendants to oppose the plaintiffs' claim.

[56] In any event, regardless of her explanation on the actions taken subsequent to the Court of Appeal order, I find that that the provisions of the Land Acquisition Act 1960 does not provide for a land administrator to conduct an 'ulangan siasatan'.

[57] To do so would be tantamount to ignoring the applicable provisions on the process by which an award of compensation is arrived at. The process of making an award for compensation lies only within the four corners of the Land Acquisition Act 1960.

[58] The plaintiffs strenuously argued that a purposive approach ought to be adopted to conclude that an award had been made under s 14(1). The EPU letter is relied on to bolster this argument.

[59] I find the argument to be fallacious for two reasons. Firstly, it would be giving a very strained interpretation to the provisions of the Land Acquisition Act 1960 for an award under s 14(1) to cater for the disputed award made in an 'ulangan siasatan'. To reiterate, an award under s 14 comes about only by the process laid down in the preceding sections. The principles on statutory interpretation are well established. This court is not entitled to read into the law words which are non-existent (see: *AJS v JMH and another appeal* [2022] 1 MLJ 778, *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721).

[60] Secondly, the EPU letter was merely copied to the plaintiffs. Its attachment, in the form of the disputed award cannot, by any stretch of imagination, be construed as an award within the meaning of s 14(1) of the Land Acquisition Act 1960.

[61] Further, the scheme of the Land Acquisition Act 1960 also provides for an objection to be made against the award of the land administrator. The plaintiffs' main relief in this action is found in para 72(1) of its statement of claim where an order is sought 'that the defendants shall pay the award of compensation in the sum of RM56,992,100.30'. If the contention of the plaintiffs is right in that an award had been made under s 14(1), to grant such a relief would be to allow the plaintiffs to circumvent the provisions of the Land Acquisition Act 1960 as the party paying the compensation monies would be deprived of the opportunity to make an objection to the award.

[62] In the circumstances, I am of the view that this court cannot grant the main relief sought for.

THE CLAIMS FOR LATE PAYMENT CHARGES AND DAMAGES

[63] For the sake of completeness, I shall make mention of the other reliefs sought.

[64] Apart from claiming to be paid the amount of RM56,992,100.30, the plaintiffs also seek to be awarded late payment charges pursuant to s 32 of the Land Acquisition Act 1960. This claim is consequential and contingent to the main claim being allowed. In view of my decision on the main relief, the question of late payment charges does not arise.

[65] With regard to aggravated and exemplary damages, this claim is premised on the refusal of the land administrator to pay compensation after the disputed award. Again, in view of my decision on the main relief, the issue of damages does not arise.

CONCLUSION

[66] Premised on the reasons aforementioned, the plaintiffs case fails and must be dismissed. I also order that costs of RM15,000 be paid by the plaintiffs' to the defendant.

Claim dismissed.

Reported by Nabilah Syahida Abdullah Salleh